

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT)

CASE NO: 2019-CP-10-04193)

Gregory Muxlow, individually and as)
Personal Representative of the Estate of)
Jennifer Muxlow,)

Plaintiff,)

vs.)

**AMENDED ORDER GRANTING
CARROLL MANAGEMENT GROUP,
LLC'S MOTION TO DISMISS
PURSUANT TO RULE 12(b)(2), RULE
12(b)(6) AND RULE 12(c), SCRCP**

Natasha Anglin, the Personal)
Representative of the Estate of Henrietta)
Benson, Donita Failey, Arnold Harris,)
Yokeema Harris, Ruby Tuesday, KC)
Mulligan's, ARIUM St. Ives, Carroll)
Management Group, South Carolina)
Department of Transportation, City of)
North Charleston, and Charleston County,)

Defendants.)

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This matter came before the Court on January 10, 2020, on Defendants Arium St. Ives and Carroll Management Group, LLC's Motion to Dismiss Pursuant to Rule 12(b)(2), Rule 12(b)(6) and Rule 12(c), SCRCP. Appearing at the hearing were Joshua Hawkins on behalf of Plaintiff, and Elizabeth Morrison on behalf of Arium St. Ives and Carroll Management Group, LLC. Further appearing were Catharine Griffin on behalf of Defendant Ruby Tuesday, Christopher Lizzi on behalf of Defendant K.C. Mulligans. and Chris Kovach on behalf of Defendants South Carolina Department of Transportation, City of North Charleston and Charleston County. Based on the materials received by the Court and the arguments of counsel, the Court grants the Motion to Dismiss.

Relevant Factual Background and Procedural History

Plaintiff alleges that on November 20, 2018, the decedent, Jennifer Muxlow, crossed Highway 52/Rivers Avenue, where she was struck by a vehicle driven by Defendant Natasha Anglin. Plaintiff further alleges that the decedent died as a result of the injuries that she sustained in the collision.

At the time of the incident, the decedent was a tenant of the Arium St. Ives apartment complex with her boyfriend Arnold Harris. The complex is located at 7930 St. Ives Road in North Charleston, South Carolina, and was managed by Carroll Management Group, LLC (“CMG”). Plaintiff alleges that Arium St. Ives and CMG’s employees and agents knew that a number of the complex’s tenants crossed Highway 52/Rivers Avenue on a daily basis and were negligent in subjecting the decedent and others to the dangers of crossing the roadway without a crosswalk. Plaintiff also alleges the decedent’s family has sustained damages in the form of additional pain and anguish following Arium St. Ives and CMG’s initiation of eviction proceedings against the decedent following her death.

Plaintiff initiated this action on April 24, 2019 in Greenville County and asserted causes of action against Arium St. Ives and CMG for 1) common law recklessness and negligence; 2) negligent hiring, retention and supervision; 3) negligent entrustment; 4) survival action; 5) wrongful death; 6) violation of the South Carolina Unfair Trade Practices Act; and 6) a class action on behalf of “all persons using the public roads located where the collision described herein occurred who have been injured by the defendants’ negligence and recklessness and all persons harmed by the defendants’ recklessness involving other public roads in Charleston County and the City of North Charleston that do not have crossways or other proper safety precautions.”

Arium St. Ives and CMG filed a joint Motion to Dismiss and timely answered the Complaint on May 31, 2019. Thereafter, Plaintiff amended his Complaint and filed an Amended Complaint on July 18, 2019. CMG and Arium St. Ives responded to the Amended Complaint by again filing a Motion to Dismiss and answering the Complaint. During the pendency of the initial Complaint and before the filing of the Amended Complaint, CMG, Arium St. Ives, K.C. Mulligans, the South Carolina Department of Transportation, the City of North Charleston, and Charleston County moved to transfer venue to Charleston County.

The Honorable Edward W. Miller held a hearing on July 23, 2019, wherein he granted the Motion to Transfer Venue to Charleston County, and ruled that all of the pending motions, including the motions filed by CMG and Arium St. Ives, would be considered by the court in Charleston County.

Multiple dispositive motions were heard by this Court on January 10, 2020¹. During the hearing, Plaintiff voluntarily dismissed Arium St. Ives as a party to the lawsuit. In addition, Plaintiff agreed to dismiss its arguments against CMG arising from its alleged failure warn of the dangers of crossing a roadway without a crosswalk and failure to request the installation of a crosswalk from SCDOT, Charleston County and/or the City of North Charleston. Plaintiff's sole remaining allegations against CMG stemmed from a theory of "wrongful eviction" of the decedent, entitling the estate and the family to damages.

On January 13, 2020, this Court granted CMG's Motion to Dismiss, Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings, and K.C. Mulligan's Motion to Dismiss in a Form 4 Order filed on January 13, 2020².

¹ Plaintiff continued its Motion for Summary Judgment against Defendants Arnold Harris and Yokeema Harris.

² During the hearing Plaintiff's counsel consented to the dismissal of ARIUM St. Ives as a party to the case.

STANDARDS FOR MOTIONS

Under Rule 12(b)(6), SCRPC, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the motion must be granted if, viewing the evidence in the plaintiff's favor, the "facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999) aff'd, 345 S.C. 626, 550 S.E.2d 304 (2001). When the dispute is not to the underlying facts but involves the interpretation of the law, it is proper to decide issues on a 12(b)(6) motion. Id.

A motion for judgment on the pleadings pursuant to Rule 12(c), SCRPC, will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action is stated. Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982). While a Rule 12(c) motion admits the well pleaded facts in the complaint, it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). A motion for judgment on the pleadings considers the allegations in the defendant's answer and other pleadings in the case also. Brown v. United Ins. Co. of America, 268 S.C. 254, 233 S.E. 2d 298 (1977).

DISCUSSION

"To recover for negligence, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." Washington v. Lexington Cty. Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 207 (Ct. App. 1999). "The absence of any one of these elements renders the cause of action

insufficient.” *Id.* Plaintiff alleged, and therefore admitted, that the collision resulting in the decedent’s death occurred on Highway 52/Rivers Avenue, a public highway. Plaintiff does not allege that CMG owns, possesses, controls or maintains the highway where the collision occurred. As a matter of law, CMG owed the decedent no duty because it did not own or possess the highway, nor did any of their employees, agents or representatives operate the vehicle that struck and killed the decedent.

I. Plaintiff has Failed to Plead Facts Sufficient to Establish a Cause of Action for Wrongful Eviction.

Although not specifically pled as a separate cause of action, Plaintiff alleges in the Amended Complaint that the decedent’s family reported her death to Arium St. Ives and CMG along with official documentation of her death as requested, and that despite having “proper notice” of the decedent’s death, Arium St. Ives and CMG initiated eviction proceedings against decedent, which caused decedent’s family additional pain and anguish³. Notwithstanding these allegations, South Carolina does not recognize a cause of action for emotional damages sustained by family members of a wrongfully evicted person.

The rights and duties of landlords and tenants are established by the South Carolina Residential Landlord Tenant Act (SCRLTA). *See*, Section 27-40-20, SOUTH CAROLINA CODE OF LAWS, 1976, as amended. Plaintiff has alleged that Arium St. Ives and CMG initiated eviction proceedings against decedent after her death. To the extent the eviction was improper, the remedies available to the tenant/decendent are set forth in Section 27-40-660, SCRLTA, and apply when the landlord “unlawfully removes or excludes the tenant from the premises.” Since the decedent was no longer alive at the time of eviction, it stands to reason that the decedent suffered no damages

³ Plaintiff pled and therefore admitted that decedent moved in to the Arium St. Ives apartment with her boyfriend, Defendant Anthony Harris. Both were leaseholders and the eviction proceedings were initiated against Harris, although both names were on the lease.

from the so-called “wrongful eviction⁴.” As decedent’s family members were not tenants at the subject apartment complex, Arium and CMG owed them no duties under the SCRLTA.

In the alternative, Plaintiff argues that the family is entitled to emotional damages from Arium and CMG due to the additional pain and anguish they endured from the eviction. As pled, this emotional distress claim, whether intentional or negligent, is not recoverable under South Carolina law. See, Doe 2 v. Citadel, 421 S.C. 140, 153, 805 S.E.2d 578, 585 (Ct. App. 2017), reh'g denied (Sept. 27, 2017), cert. denied (Mar. 28, 2018); see also, Upchurch v. New York Times Co., 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993)(“It is not enough that the conduct is intentional and outrageous. It must be *directed at the plaintiff*, or occur in the presence of a plaintiff of whom the defendant is aware.”)(emphasis added); Restatement (Second) of Torts § 46(2) (1965)(bodily harm or physical presence requirement for recovery for emotional distress by a third-party); Kinard v. Augusta Sash & Door Co., 286 S.C. 579, 336 S.E.2d 465 (1985)(negligent infliction of emotional distress limited to bystander recovery, where mother could recover damages for emotional trauma arising from *witnessing injuries* to her daughter)(emphasis added).

Conclusion

IT IS THEREFORE ORDERED that CMG’s Motion to Dismiss is hereby **GRANTED** as stated herein. Accordingly, this Court dismisses all causes of action against CMG because, as a matter of law, CMG did not owe the decedent a duty of care. In addition, Plaintiff has failed to plead a cause of action for wrongful eviction. Furthermore, this Court finds that the Amended Complaint fails to state claims upon which relief can be granted against CMG for common law

⁴ At the hearing, it was confirmed that no judgments or collection actions would be pursued against the Estate arising from the eviction by CMG.

recklessness; negligent hiring, retention and supervision; negligent entrustment; survival action; wrongful death; violation of the South Carolina Unfair Trade Practices Act; and a class action.

AND IT IS SO ORDERED!

The Honorable Bentley D. Price

Dated: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Gregory Muxlow , plaintiff, et al VS Natasha Anglin , defendant, et al
Case Number: 2019CP1004193
Type: Order/Amend

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766